

APPENDIX B
NON-SCC POLICY ISSUES

1. Other Agencies' Authorities.

Special Waivers.

Not a problem

Section 423(4) and (5) allows CIA to request waivers of certain Immigration and Naturalization Service and Internal Revenue Service rules and procedures in certain circumstances. CIA proposes that these subsections provide authority to obtain, not request waivers. CIA should be able to seek such assistance, but should not have the legal authority to unilaterally receive such assistance. The laws and authorities of another agency should be protected. In cases where an agency does not regard the assistance as proper or appropriate, the current language would not preclude resolution by higher authorities.

Recommended Administration Position: The bill's original language should be retained.

Scope of FBI Activities.

Section 504(a) appears to restrict FBI activities to only "intelligence functions" authorized in Title V. This could be interpreted to exclude the law enforcement aspect of the FBI and to forbid collection of evidence for prosecution.

Recommended Administration Position: The language of this section should be clarified to allow for such collection or efforts should be made to insure that this is clarified in legislative history.

2. Federal Management.

• Disposal of Property.

(New Section 421(a)(18)). There is no provision in Title IV that would grant CIA authority to dispose of property and use the proceeds to purchase new property. CIA proposes adding the following section:

"dispose of property and use the proceeds therefrom to purchase new property notwithstanding the provision of any other law or Federal regulation whenever the Director deems such action necessary to the successful performance of agency functions or to protect the security of agency activities."

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Proceeds from the disposal of property should be deposited into Miscellaneous Receipts of the Treasury as is the government-wide practice. Use of these proceeds to purchase new property would circumvent the normal review and appropriations process.

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Property can be disposed of in accordance with the Public Buildings Act, and arrangements can be worked out with GSA to protect CIA involvement. If security is an overriding factor, the Director should certify such and only in these extraordinary circumstances, should disposal of property be made notwithstanding the Public Buildings Act or other applicable provisions of law.

Recommended Administration Position: CIA's proposed question should be withdrawn.

Disposition of Proprietary Income.

Section 421 (d) (1) of the bill states that any funds generated by a proprietary in excess of the amount necessary for its normal operational requirements shall be deposited into miscellaneous receipts of the Treasury. CIA proposes substitute language which would provide that such funds may be used to form and operate additional or successor proprietaries in furtherance of the same or similar operational requirements or purposes. We believe that, as with the liquidation provisions, all such funds should be returned to the Treasury. Such proposed financing procedures would circumvent the normal review and appropriations process.

Recommended Administration Position: CIA's proposed substitute language should be withdrawn.

Contracts.

CIA proposes a new Section 422(d) which would provide the Director of the Agency authority to undertake contract negotiations, without regard to the provisions of law relating to the making, performance, amendment or modification of contracts under certain circumstances. CIA indicates that DOD, Treasury, DOA, Commerce, DOE, DOT, GSA, NASA, TVA and GPO currently have such authority. The law provides that the President may exempt agencies from certain legal procurement procedures. The President has designated the above agencies in Executive Order 10789. Since it is within the authority of the President to grant such exemption there is no need to seek such from the Congress. This section also expands the scope of exemptions currently granted under PL 85-804 and E.O. 10789.

Recommended Administration Position: CIA's proposed section should be withdrawn.

Section 624 relates to training in NSA. The President's existing authority to exempt agencies from the provisions of the Government Employees Training Act was delegated to the U.S. Civil Service Commission (now the Office of Personnel Management), and in 1959, the Department of Defense's request to exempt NSA from certain provisions of the training law was granted. Thus, this section is unnecessary and should be deleted. Further, Sections 421(a)(16) and 621(a)(11), which authorize CIA and NSA to pay expenses of attendance at meetings, are unnecessary as 5 U.S.C. 4110 already authorizes agencies to use appropriations for travel to pay such expenses.

Recommended Administration Position: Sections 624, 421(a)(16), and 621(a)(11) should be deleted.

NSA Facilities Management.

NSA, in Section 621(a)(6) as amended, would be exempted from certain statutes regarding the acquisition, construction, and alteration of buildings and facilities. GSA has the flexibility to exempt agencies from statutory restrictions, if warranted.

Recommended Administration Position: Statutory waivers in Section 621(a)(6) should be deleted.

3. Personnel Policy.

Assignment of Personnel.

Crop! Section 421(c) would authorize any department or agency to assign or loan personnel to CIA, notwithstanding any other provisions of law. OMB and OPM believe there is a need to add several requirements: (1) that loans of this nature have the concurrence of the employee concerned, and (2) that the employee is guaranteed the right to return to the loaning agency to his or her former position or a position of like seniority, status and pay.

Recommended Administration Position: This section should be amended as above.

Appointment and Pay.

Section 421(j)(1) of the bill would authorize CIA to appoint, promote, and separate personnel without regard to the provisions of Title V of the U.S. Code. CIA has proposed broadening this provision as follows:

"The agency may appoint, promote, demote, reassign, suspend, and separate such personnel, or contract for such personal services as it deems advisable,

advisable, without regard to the provisions of any other law..."

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Recommended Administration Position: To conform to changes made in Section 114(m), the words "promote, demote, reassign, suspend" should be deleted. Further, CIA's personnel exemption should relate solely to appropriate sections of Title V of the U.S. Code. Finally, since GS-18 is the generally applicable limit on all administratively determined pay, this section should be amended so as to conform to the GS-18 limit.

Position Limitation.

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Section 421(j)(3) would limit executive schedule positions in addition to those of Director, General Counsel, and Inspector General and any positions in the grades of GS-16, GS-17, and GS-18 other than those transferred to the agency under the Act, to those authorized by law. There are some technical problems. First, since CIA would be specifically authorized under Section 421(j)(1) to compensate its employees without regard to the General Schedule, it would have no GS-16, 17 or 18 positions, nor would any be authorized by law. Second, since CIA would specifically have administratively determined pay limited to the rate of GS-18 (see previous position regarding Section 421(j)(1)), this restriction on other Executive Schedule positions would be redundant and unnecessary. Finally, as the bill is currently written, "all positions established in ... the Central Intelligence Agency as in effect on the day before the effective date of this title ... are transferred to the Director" (Section 451(a)). Thus, the bill does not provide that such positions will be transferred specifically to the agency. The intent of this provision appears to be to set a statutory position ceiling for CIA. OMB supports CIA's amendment regarding Section 451(a) which would transfer existing positions to the agency, except those positions which the DNI determines should be transferred to the Office of the Director of National Intelligence.

no

Recommended Administration Position: Section 421(j)(3) should be deleted.

Transfer of Agency Employees to Competitive Civil Service.

Subsection 421(j)(4) and 621(g)(3) would permit employees who have been separated from CIA and NSA to be placed by the Office of Personnel Management in positions in the competitive service in the same manner as competitive employees who transfer between positions in the competitive service.

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Both OMB and the OPM object to these provisions; employees terminated from CIA and NSA should be able to compete for positions in the competitive service, but should not be placed noncompetitively in such positions. In fact the OPM does not "place" an employee in a position in the competitive service in another agency. The OPM issues certificates based on competition and defines the circumstances under which an agency may appoint noncompetitively present or former Federal employees. Section 403(c) of Title 50, U.S. Code, currently provides that an employee terminated from CIA may accept employment in another agency if declared eligible for such employment by the Commission. If necessary and appropriate, NSA might wish to pursue similar statutory language.

no

Recommended Administration Position: The sections should be amended to delete the above provision.

Employee Termination Benefits.

CIA proposed adding a new Section 421(k), which would provide for special training and other personnel benefits for certain employees who are terminated by the agency. Such employees could receive up to two years of training, be retained at current salary and be excluded from staffing limitations otherwise applicable.

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Recommended Administration Position: This proposed section should be withdrawn.

Benefits and Allowances.

Section 441(b) and (d) prescribe statutory policy with respect to benefits and allowances for CIA employees. CIA has proposed language which would permit CIA benefits and allowances to be "comparable to" those provided in Chapters 57 and 59 of Title V, U.S. Code and, in the case of employees assigned to duty stations in any foreign area, "as are provided" employees of the Foreign Service. Since the benefits and allowances provided civil service and foreign service personnel are somewhat discretionary in that ranges and ceilings are often prescribed, comparability seems an inappropriate concept.

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Recommended Administration Position: Language such as "in accordance with" or "in the same manner and under the same circumstances" should be used in lieu of CIA's proposed wording.

In subsections 441(b)(2) and 441(d)(1), CIA has proposed amendments which would give the Director of the Agency authority to provide benefits and allowances in excess of those authorized in Title V of the U.S. Code and under Title IV of the Foreign Service Act of 1946 (22 U.S.C.

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1131-1158) "in order to accomplish the agency's function abroad." Similar provisions are proposed for Section 651.

no Recommended Administration Position: These amendments should be withdrawn.

Retirement System.

Section 653 would authorize NSA to designate a limited number of employees in a separate retirement and disability program which the bill suggests may hereafter be authorized by law. This section should be deleted. The Administration has opposed the establishment of separate, limited retirement systems.

Recommended Administration Position: Section 653 should be deleted.

4. Budgetary Authority and Procedures.

Expenditure of Funds.

Section 425(a) describes circumstances when sums made available to CIA can be spent. CIA has proposed amendatory language which would allow CIA to spend sums for activities of an extraordinary or emergency nature not otherwise authorized by the Act when such expenditures are approved in advance by the Director of the Agency.

no Recommended Administration Position: CIA's proposed amendatory language should be withdrawn.

NASA Funding Authorities.

NASA/DOD have proposed changing Section 621(a)(1), "to provide NSA the same flexibility as to appropriations limitations provided to CIA." The amendment appears to go considerably beyond the intent of the original section as well as beyond CIA's "flexibility" (CIA's provision in Title IV requires OMB approval of transfers, for example). There is little reason to fund NSA in a manner similar to CIA; the existing method of funding has proven adequate. This subsection should remain unamended.

Recommended Administration Position: NSA/DOD proposed change should be withdrawn.